

## **REQUEST FOR APPROVAL**

**To:** **Scott Smithline**  
Director

**From:** **Howard Levenson**  
Deputy Director, Materials Management and Local Assistance Division

**Request Date:** November 15, 2017

**Decision Subject:** Adoption of Regulations Amending the Electronic Waste Recycling Program

**Action By:** November 21, 2017

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### **Summary of Request:**

Staff seeks approval to adopt proposed regulations that would amend aspects of current regulations governing the covered electronic waste (CEW) recycling payment program, as well as finalize related emergency rules adopted in 2015, and readopted in 2017. The proposed regulations establish and clarify requirements related to participating in the CEW program and CalRecycle's oversight and administrative responsibilities.

The proposed regulations apply to Chapter 8.2 of Division 7 of Title 14 of the California Code of Regulations. They will serve to finalize two existing emergency regulation packages that address: 1) the assessing of civil liabilities pursuant to the authority granted under Public Resources Code (PRC) section 42474, and 2) the management of treatment residuals derived from the dismantling of CEW. In addition to other general edits, the proposed rules will also amend and clarify aspects of definitions, applicability and limitations, documents and records, net cost reports, applications, prohibited activities, appeals, requirements for collectors and recyclers, claims, cancellation, and manufacturer payments.

### **Recommendation:**

Staff recommends adopting the proposed regulations that would modify areas within Chapter 8.2 of Division 7 of Title 14 of the California Code of Regulations and directing staff to file the proposed regulations with the Office of Administrative Law for approval and publishing.

The proposed regulatory language can be found as Attachment 1 to this Request for Approval.

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### **Director Action:**

On the basis of the information and analysis in this Request for Approval and the findings herein, I hereby approve the adoption of Regulations Amending the Electronic Waste Recycling Program and direct staff to file the regulatory packet with the Office of Administrative Law for approval and publishing.

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Scott Smithline  
Director

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Date Signed

## **Attachments**

Proposed Regulatory Language Editing and Amending Chapter 8.2 of Division 7 of Title 14 of the California Code of Regulations including portion of Articles 1, 2, 2.1, 2.2, 2.3, 2.4, 2.5, 3 and 6.

### **Background and Analysis:**

#### Statutory Authority:

The authority to adopt regulations to implement and administer the Electronic Waste Recycling Act of 2003 is found in PRC § 42475. Portions of the proposed regulations were previously adopted in late 2015 under emergency authority established by PRC § 42475.2, and readopted in 2017.

#### Program Background:

The Electronic Waste Recycling Act of 2003 (PRC § 42460, *et seq.*) establishes a funding mechanism to provide for convenient collection opportunities and waste processing capabilities for certain electronic products discarded in California. Covered electronic devices (CED) are video display devices with screen sizes greater than four inches that the Department of Toxic Substances Control (DTSC) has determined to be hazardous when discarded. When CED are discarded, they become covered electronic waste (CEW). Under the CEW recovery and recycling payment program administered by CalRecycle, approved collectors document the recovery of eligible CEW before transferring that material to an approved recycler. Approved recyclers receive and dismantle (cancel) the CEW, compliantly manage derived residuals, and subsequently submit claims for payment.

The CEW recovery and recycling payment program has been operating largely under the same regulations since its inception in 2005. Initial emergency rules were finalized in October 2006. Subsequent print filings associated with recovery and recycling payment rate changes, emergency rules to enact electronic waste recycling fee changes, and Section 100 rule changes necessary to conform to statutory developments have left the overall requirements of the program unchanged for a dozen years. In that time, more than 2 billion pounds of CEW was recovered and claimed for payments through the program. Along the way, program staff have noted deficiencies within the rules and the inevitable drift that occurs due to changes in real-world circumstances relative to static regulations.

In August 2015, CalRecycle filed emergency rules to address the evolution of global markets for treatments residuals, specifically cathode ray tube (CRT) glass. Historically, a key criterion for CEW recycling claims was that treatment residual CRTs or CRT glass be shipped with the purpose of recycling. Markets for CRT glass had been eroding with the demise of CRT use in video technology, and substantial uncertainty existed about both domestic and international destinations receiving California-generated glass. To address this concern, the emergency rules created additional disposition options for CRTs and CRT glass, including disposal, along with improved documentation requirements. Similar documentation enhancements were established for other treatment residuals as well.

In September 2015, CalRecycle filed emergency rules to implement and administer a civil liabilities (penalties) authority that had been vested with CalRecycle via 2012 Budget Act trailer bill language. The rules establish a framework to impose civil liabilities for the failure to pay the CEW recycling fee, manufacturer non-compliance, and false statements or representations.

The process and procedures set forth in the rules ensure CalRecycle has the ability to exercise its authority and impose civil liabilities.

#### General Intent of Proposed Rules:

In addition to finalizing regulations adopted as emergency rules in late 2015, and readopted in 2017, the intent of this rulemaking is to clarify requirements and allowances relative to the CEW program. The rules will establish better documentation practices aimed at ensuring compliant handling of hazardous electronic waste, and increase the integrity of the program and protect the associated tens of millions of dollars in public funds paid annually to participating CEW collectors and recyclers.

#### **Rulemaking Timeline:**

Over the course of several years, program staff have had several opportunities to engage with stakeholders on topics addressed in the proposed regulations. In addition to administering the CEW recovery and recycling program for a dozen year, program staff have hosted over three dozen stakeholder workshops apart from departmental considerations and determinations. A main purpose of the workshops was to exchange information between the program and its participants.

Specific to the issues addressed in the two emergency rule packages:

#### CRT/Residuals

Staff held many workshops since 2010, including several in collaboration with DTSC, on the subject of CRT management and diminishing CRT markets. CalRecycle took into consideration stakeholder participation during these workshops, which assisted CalRecycle with its drafting of the proposed regulations.

Staff recognized through experience that similar constraints facing CRT glass management also affect recyclers when handling other regulated residual materials, such as plasma panel glass and mercury containing lamps.

Staff have proposed documentation approaches that ensure compliance while reducing unnecessary burden.

#### Administrative Civil Penalties

Staff held an informal stakeholder workshop on the subject of administrative civil liabilities prior to seeking formal approval to file emergency rules in 2015. CalRecycle incorporated changes into the emergency rules in response to public comments.

Staff identified minor issues of clarity that are being addressed between the existing emergency rules and the proposed final rules.

Staff held an informal workshop specific to the entirety of this rulemaking on December 20, 2016 to solicit comments on the draft proposed regulatory text.

Staff presented the Proposed Regulations Amending the Electronic Waste Recycling Program at the January 24, 2017 Public Meeting requesting approval to initiate the formal rulemaking process.

Formal rulemaking activities began on August 11, 2017 when the Office of Administrative Law published CalRecycle's Notice of Proposed Regulatory Action. The written comment period ran from August 11, 2017 to October 10, 2017. On October 11, 2017, CalRecycle conducted a public hearing on the proposed regulations to allow for additional written and oral comments. After considering comments received during the 45-day comment period (see Summary of Comments), CalRecycle determined that no further revisions to the proposed regulations are warranted. Staff recommends the Director approve the adoption of Regulations Amending the Electronic Waste Recycling Program and direct staff to finalize and forward the regulatory package to the Office of Administrative Law for approval and publishing, anticipated December 2017.

#### Summary of Comments:

There were no comments at the October 11, 2017 public hearing. After considering the totality of public comments submitted during the written comment period, staff determined that no further revisions to the proposed regulations are warranted. The following summarizes the comments received and provides CalRecycle's staff response.

**Section 18660.22(c)(2)(A) and (B). Records for Treatment Residuals Derived from Dismantling non-CRT CEWs:** One written comment suggested to clarify that the quantity of bare plasma panels and lamps required to be recorded should be in pounds and not in units. This change would be consistent with other language regarding quantity in the text of the regulations.

Response: This provision aims to ensure that treatment residuals derived from dismantling non-CRT CEWs that remain regulated materials are properly managed. The request to maintain records relating to the quantity of bare plasma panels and lamps is intended to provide CalRecycle the ability to verify compliant disposition. Staff believes it is not necessary to specify the type of measurement as quantities can be reported using any appropriate units of measure; therefore no change has been made to the proposed regulations.

**Section 18660.22(c). Cancellation Records for non-CRT CEW:** One written comment suggested to remove the requirement to report and record the scale weight of each device prior to dismantling given that many times the reported weight cannot be reconciled with the manufacturer weight.

Response: Staff has already proposed to remove the requirement to report and record the serial number of each non-CRT CEW device prior to dismantling recognizing that this information item requirement is problematic to comply with in practice. Staff believes the requirement to report and record the scale weight of each device ensures CalRecycle the ability to verify that the claimed devices have been dismantled (cancelled) and cannot re-enter the payment system thus protecting the integrity of the program. Staff disagree with the comment and no revisions have been made to the proposed regulations.